

# Exhibit B

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

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4 MAGNOLIA MEDICAL : CIVIL ACTION  
5 TECHNOLOGIES, INC., :  
6 Plaintiff, :  
7 vs. :  
8 KURIN, INC., :  
9 Defendant. : NO. 19-00097-CFC

10 - - -

11 Wilmington, Delaware  
12 Wednesday, April 15, 2020  
13 9:15 o'clock, a.m.  
\*\*\*Telephone conference

14 - - -

15 BEFORE: HONORABLE COLM F. CONNOLLY, U.S.D.C.J.

16 - - -

17 APPEARANCES:

18 FISH & RICHARDSON P.C.  
19 BY: DOUGLAS E. McCANN, ESQ.

20 -and-  
21

22  
23  
24 Valerie J. Gunning  
25 Official Court Reporter

1 In claim 1 where the defendant was just  
 2 referring to the term diverter and if they configured to  
 3 transition, that's the second place it appears in that  
 4 claim. So if we look above there, the first time the term  
 5 diverter is used in the claim is above where it says, a  
 6 diverter having an inlet, a first outlet in fluid  
 7 communication with the reservoir and a second outlet. So  
 8 that is clearly structure. And, of course, with the  
 9 presumption being that this is not a means-plus-function  
 10 claim, so the term means is not used, then Kurin has to be  
 11 able to show Your Honor that there is no structure in the  
 12 claim thereby converting this into a means-plus-function  
 13 claim, that there's only function that is discussed in the  
 14 claim, and we don't have that here. The first time that a  
 15 diverter, the term a diverter appears, it goes directly to  
 16 describing the structure of the diverter.

17 THE COURT: All right. Do defendants want to  
 18 say anything else?

19 MR. HANGARTNER: Your Honor, I would just point  
 20 out that if the -- there can be a structure recited in a  
 21 means-plus-function claim, but if that structure is  
 22 insufficient to perform the required function, then it is  
 23 still a functional claim and that's exactly what we have  
 24 here. It's laid out in the briefing. But the structural  
 25 components identified here, and this is shown in some detail

11

1 in our slide 27 and 28, the structural components that are  
 2 described in these claims are not sufficient to perform the  
 3 function of the diverter, of a diverter that's required by  
 4 the claim.

5 THE COURT: All right. So let's actually pull  
 6 up the slide. You said it was slide 27. Is that right?

7 MR. HANGARTNER: Yes, Your Honor. Slide 27, the  
 8 title is claimed structure insufficient to perform this  
 9 function, and what we've shown on the left side are two  
 10 modified figures from the '001 patent, Figure 6A and 6B,  
 11 and the modification was to remove the diversion mechanism  
 12 shown in those so that what we're seeing here is the claimed  
 13 structure.

14 If you look carefully at claim 1, when you see  
 15 the structure of this claim, there's an inlet that's coupled  
 16 to the patient and that's in 514. A first inlet includes  
 17 communication with the reservoir. That's 516. We have a  
 18 second outlet, 518, which is shown down in Figure 6B in  
 19 blue. Then we have the inlet being coupled to the first  
 20 outlet. That's our 6A flow path in yellow, and the inlet  
 21 coupled to the second outlet, and that's the flow path in 6B  
 22 as shown in orange.

23 Now, given all of that structure, there is  
 24 nothing there that can perform the agreed upon function of  
 25 the diverter, which is to direct the flow. The flow coming

1 into this will just go willy-nilly down the path. There's  
 2 nothing directing it down one of those two paths, and that  
 3 is, in fact, the specific functionality that's claimed for  
 4 the diverter.

5 THE COURT: Plaintiff, do you want to respond to  
 6 that?

7 MS. BROOKS: I do, Your Honor. And so going  
 8 back to our slides, if the Court -- and I don't know if  
 9 anyone can do this from their homes.

10 THE COURT: I've got it. I have it in chambers.

11 MS. BROOKS: Oh, wonderful. Okay. So at  
 12 slide 41, hopefully we're on the same slide. We show here  
 13 the structure itself in the claims. Claim 1 and 21 we put  
 14 up there.

15 And if I'm hearing defendant's argument  
 16 correctly, if you look at that, they agree that it is  
 17 structure, and the only thing that I'm hearing them argue is  
 18 that there's not enough structure there to be able to either  
 19 send the sample down the right-hand side appears in Figure  
 20 6A versus the left-hand side as it appears in Figure 6B.  
 21 That clearly would be left -- that's more of an enablement  
 22 argument.

23 Would one of skill in the art in looking at the  
 24 claims of the invention and reading the specification be  
 25 able to make and use the claimed invention. We submit that

13

1 they would. This is a very simple premise, and that there  
 2 are multiple ways one could have a diverter that would  
 3 divert the flow down the right-hand side on one occasion or  
 4 down the left-hand side on another occasion.

5 What defendants are really trying to do is have  
 6 this limited to a very specific structure, and the way they  
 7 are doing that is by arguing that this turning what is  
 8 clearly not a means-plus-function claim because it has very  
 9 specific structure right in the claim and trying to argue  
 10 that it is one. There may come a day where --

11 THE COURT: All right. I mean, I think, you  
 12 know, can you just address specifically then -- I've got now  
 13 concerns that there's not a structure recited in the claims  
 14 that is sufficient to accomplish a transition that the  
 15 diverter is configured to accomplish. So can you show me  
 16 anything in the language of claim 1 that actuates the  
 17 transition?

18 MS. BROOKS: I would say yes, Your Honor, or if  
 19 we go back --

20 THE COURT: All right.

21 MS. BROOKS: I'm sorry, Your Honor.

22 THE COURT: I should have used the word  
 23 effectuate the transition.

24 MS. BROOKS: And, yes, Your Honor. What I would  
 25 say is to one of skill in the art in reading the claim, they